

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant:	Michael J. Borg et al.	Examiner:	Tan D. Nguyen
Serial No.:	09/820,457	Group Art Unit:	3689
Filed:	March 28, 2001	Docket:	10006799-1
Title:	SYSTEMS AND METHODS FOR UTILIZING PRINTING DEVICE DATA IN A CUSTOMER SERVICE CENTER		

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Mail Stop Appeal Brief – Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir/Madam:

This Appeal Brief is submitted in support of the Notice of Appeal filed June 30, 2010, appealing the rejection of claims 1-9, 16-19, 26, and 27 of the above-identified application as set forth in the Final Office Action mailed March 31, 2010.

The U.S. Patent and Trademark Office is hereby authorized to charge **Deposit Account No. 08-2025** in the amount of **\$540.00** for filing a Brief in Support of an Appeal as set forth under 37 C.F.R. § 41.20(b)(2). At any time during the pendency of this application, please charge any required fees or credit any overpayment to Deposit Account No. 08-2025.

Appellant respectfully requests reconsideration and reversal of the Examiner's rejection of pending claims 1-9, 16-19, 26, and 27.

**Appeal Brief to the Board of Patent Appeals and Interferences
of the United States Patent and Trademark Office**

Appellant: Michael J. Borg et al.

Serial No.: 09/820,457

Filed: March 28, 2001

Docket No.: 10006799-1

Title: SYSTEMS AND METHODS FOR UTILIZING PRINTING DEVICE DATA IN A CUSTOMER
SERVICE CENTER

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REAL PARTY IN INTEREST

The real party in interest is Hewlett-Packard Development Company, LP having a principal place of business at 11445 Compaq Center Drive West, Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

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RELATED APPEALS AND INTERFERENCES

Appellant submits that there are no related appeals or interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal.

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STATUS OF CLAIMS

Claims 1-9, 16-19, 26, and 27 are pending in the application (see Claims Appendix), and are the subject of the present Appeal. Claims 10-15 and 20-25 were previously cancelled without prejudice.

Claims 27, 26, 16-19, and 1-8 are rejected under 35 U.S.C. 103(a) as obvious over Hayward et al., U.S. Patent No. 6,985,877 in view of Cremon et al. or vice versa and Yokomori et al.

Claims 16-19, 1-8, 26, and 27 are rejected under 35 U.S.C. 103(a) as obvious over Hardman et al. in view of Cremon et al. and Yokomori et al. or vice versa.

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STATUS OF AMENDMENTS

No amendments have been entered subsequent to the Final Office Action mailed March 31, 2010. The claims listed in the Claims Appendix, therefore, reflect the claims as of March 31, 2010.

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SUMMARY OF THE CLAIMED SUBJECT MATTER

The following provides a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number (or paragraph number) and to the drawings by reference characters, as required by 37 CFR 41.37(c)(1)(v). Note that the reference to passages in the specification and reference characters in the drawings for each element of the claims does not imply that limitations from the specification and drawings should be read into the corresponding claim element or that these references are the sole sources in the specification and the drawings supporting the claim features.

Independent claim 1 provides a method comprising receiving a replaceable printing component (*e.g., toner cartridge 100 as described, for example, at page 8, lines 1-7; toner cartridges 228a-228c, ink cartridges 228d, and other replaceable components as described, for example, at page 10, line 24 - page 11, line 5*) from a customer, the replaceable printing component previously installed in a printing device of the customer (*e.g., step 406 as described, for example, at page 15, lines 1-3 and illustrated, for example, in Fig. 4*); retrieving printing device data from component memory (*e.g., memory tag 108 as described, for example, at page 8, lines 8-14*) of the replaceable printing component, the printing device data comprising one or more of identification information or usage information of the printing device in which the replaceable printing component was previously installed (*e.g., step 408 as described, for example, at page 15, lines 3-5 and illustrated, for example, in Fig. 4*); storing the printing device data in a customer database (*e.g., database 224 as described, for example, at page 9, line 24 - page 10, line 23; database 300 as described, for example, at page 11, line 6 - page 13, line 24*) and associating the printing device data with a customer record of the customer (*e.g., step 408 as described, for example, at page 15, lines 3-5 and illustrated, for example, in Fig. 4*); accessing the printing device data in the customer database (*e.g., steps 500, 502, 504 as described, for example, at page 15, line 24 - page 16, line 16 and illustrated, for example, in Fig. 5*); and assisting a customer with solving problems related to the printing device by way of the printing device data (*e.g., steps 506, 508, 510 as described, for example, at page 17, line 5 - page 18, line 11 and illustrated, for example, in Fig. 5*).

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Independent claim 16 provides a method comprising retrieving printing device data from component memory (*e.g., memory tag 108 as described, for example, at page 8, lines 8-14*) of a plurality of replaceable printing components (*e.g., toner cartridge 100 as described, for example, at page 8, lines 1-7; toner cartridges 228a-228c, ink cartridges 228d, and other replaceable components as described, for example, at page 10, line 24 - page 11, line 5*) previously installed in printing devices, the printing device data comprising one or more of identification information or usage information of the printing devices in which the replaceable printing components were previously installed (*e.g., steps 406-408 as described, for example, at page 15, lines 1-5 and illustrated, for example, in Fig. 4*); compiling the printing device data into a customer database (*e.g., database 224 as described, for example, at page 9, line 24 - page 10, line 23; database 300 as described, for example, at page 11, line 6 - page 13, line 24*) (*e.g., step 408 as described, for example, at page 15, lines 3-5 and illustrated, for example, in Fig. 4*); accessing the printing device data of the customer database (*e.g., steps 500, 502, 504 as described, for example, at page 15, line 24 - page 16, line 16 and illustrated, for example, in Fig. 5*); and assisting a customer with resolving a problem with a printing device using the printing device data of the customer database (*e.g., steps 506, 508, 510 as described, for example, at page 17, line 5 - page 18, line 11 and illustrated, for example, in Fig. 5*).

Independent claim 26 provides a method comprising receiving a used replaceable printing component (*e.g., toner cartridge 100 as described, for example, at page 8, lines 1-7; toner cartridges 228a-228c, ink cartridges 228d, and other replaceable components as described, for example, at page 10, line 24 - page 11, line 5*) from a customer (*e.g., step 406 as described, for example, at page 15, lines 1-3 and illustrated, for example, in Fig. 4*); retrieving printing device data from component memory (*e.g., memory tag 108 as described, for example, at page 8, lines 8-14*) of the used replaceable printing component, the printing device data comprising one or more of identification information or usage information of a printing device in which the used replaceable printing component was used (*e.g., step 408 as described, for example, at page 15, lines 3-5 and illustrated, for example, in Fig. 4*); storing the printing device data in a customer database (*e.g., database 224 as described, for example, at page 9, line 24 - page 10, line 23; database 300 as described, for example, at page 11, line*

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6 - page 13, line 24) and associating the printing device data with a customer record of the customer (e.g., step 408 as described, for example, at page 15, lines 3-5 and illustrated, for example, in Fig. 4); accessing the printing device data of the customer database (e.g., steps 500, 502, 504 as described, for example, at page 15, line 24 - page 16, line 16 and illustrated, for example, in Fig. 5); and assisting a customer with resolving a problem with a printing device using the printing device data of the customer database (e.g., steps 506, 508, 510 as described, for example, at page 17, line 5 - page 18, line 11 and illustrated, for example, in Fig. 5).

Independent claim 27 provides a method comprising after removal of a replaceable printing component (e.g., toner cartridge 100 as described, for example, at page 8, lines 1-7; toner cartridges 228a-228c, ink cartridges 228d, and other replaceable components as described, for example, at page 10, line 24 - page 11, line 5) from a printing device, retrieving printing device data from component memory (e.g., memory tag 108 as described, for example, at page 8, lines 8-14) of the replaceable printing component, the printing device data comprising one or more of identification information or usage information of the printing device from which the replaceable printing component was removed (e.g., steps 406-408 as described, for example, at page 15, lines 1-5 and illustrated, for example, in Fig. 4); storing the printing device data in a database (e.g., database 224 as described, for example, at page 9, line 24 - page 10, line 23; database 300 as described, for example, at page 11, line 6 - page 13, line 24) (e.g., step 408 as described, for example, at page 15, lines 3-5 and illustrated, for example, in Fig. 4); accessing the printing device data of the database (e.g., steps 500, 502, 504 as described, for example, at page 15, line 24 - page 16, line 16 and illustrated, for example, in Fig. 5); and assisting a customer with resolving a problem with a printing device using the printing device data of the database (e.g., steps 506, 508, 510 as described, for example, at page 17, line 5 - page 18, line 11 and illustrated, for example, in Fig. 5).

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GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Appellant seeks review of the rejection of claims 27, 26, 16-19, and 1-8 under 35 U.S.C. 103(a) as obvious over Hayward et al., U.S. Patent No. 6,985,877 in view of Cremon et al. or vice versa and Yokomori et al.

Appellant seeks review of the rejection of claims 16-19, 1-8, 26, and 27 under 35 U.S.C. 103(a) as obvious over Hardman et al. in view of Cremon et al. and Yokomori et al. or vice versa.

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ARGUMENT

I. Rejections Under 35 U.S.C. §103

A. Applicable Law

In rejecting claims under 35 U.S.C. 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). "[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability." *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

In identifying a reason that would have prompted a person of ordinary skill in the relevant field to combine the prior art teachings, the Examiner must show some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int'l. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007). "[T]here must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (citing *In re Lee*, 277 F.3d 1338, 1343-46 (Fed. Cir. 2002); *In re Rouffet*, 149 F.3d 1350, 1355-59 (Fed. Cir. 1998)).

In addition, a rejection based on section 103 must rest upon a factual basis rather than conjecture, or speculation. "Where the legal conclusion [of obviousness] is not supported by the facts it cannot stand." *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). *See also In re Kahn*, 441 F.3d at 988 (Fed. Cir. 2006).

Furthermore, patent examiners carry the responsibility of making sure that the standard of patentability enunciated by the Supreme Court and by the Congress is applied in each and every case. The Supreme Court in *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966), stated:

Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be

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patented. As indicia of obviousness or nonobviousness, these inquires may have relevancy...

Before answering Graham's 'content' inquiry, however, it must be known whether a patent or publication is in the prior art under 35 U.S.C. § 102. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1568, 1 USPQ2d 1593, 1597 (Fed. Cir.), *cert. denied*, 481 U.S. 1052 (1987). Accordingly, subject matter that is prior art under 35 U.S.C. 102 can be used to support a rejection under section 103. *Ex parte Andresen*, 212 USPQ 100, 102 (Bd. Pat. App. & Inter. 1981) ("it appears to us that the commentator [of 35 U.S.C.A.] and the [congressional] committee viewed section 103 as including all of the various bars to a patent as set forth in section 102.").

A rejection under 35 U.S.C. 103, therefore, is based on prior art under 35 U.S.C. 102(a), 102(b), 102(e), etc. depending on the type of prior art reference used and its publication or issue date. For instance, an obviousness rejection over a U.S. patent which was issued more than 1 year before the filing date of the application is said to be a statutory bar just as if it anticipated the claims under 35 U.S.C. 102(b). Analogously, an obviousness rejection based on a publication which would be applied under 102(a) if it anticipated the claims can be overcome by swearing behind the publication date of the reference by filing an affidavit or declaration under 37 CFR 1.131. See MPEP 2141.01.

B. Rejection of claims 27, 26, 16-19, and 1-8 [and 9] under 35 U.S.C. 103(a)

Because the rejection of claims 27, 26, 16-19, and 1-8 [and 9] under 35 U.S.C. 103(a) as being obvious over Hayward et al., U.S. Patent No. 6,985,877 in view of Cremon et al. or vice versa and Yokomori et al. fails to establish a *prima facie* case of obviousness, the rejection of claims 27, 26, 16-19, and 1-8 [and 9] is not correct and should be withdrawn.

Independent claim 1 includes **"receiving a replaceable printing component from a customer, the replaceable printing component previously installed in a printing device of the customer"** and **"retrieving printing device data from component memory of the replaceable printing component, the printing device data comprising one or more of identification information or usage information of the printing device in which the replaceable printing component was previously installed."**

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Independent claim 16 includes **"retrieving printing device data from component memory of a plurality of replaceable printing components previously installed in printing devices, the printing device data comprising one or more of identification information or usage information of the printing devices in which the replaceable printing components were previously installed."**

Independent claims 1 and 16, therefore, include retrieving printing device data from component memory of the replaceable printing component or components, wherein the printing device data comprises identification information or usage information of the printing device or devices in which the replaceable printing component or components was or were previously installed, with independent claim 1 further including receiving the replaceable printing component from the customer, wherein the replaceable printing component was previously installed in the printing device of the customer.

With respect to the cited references, Appellant submits that these references, individually or in combination, do not disclose a method as recited in independent claims 1 and 16 including, amongst other things and in the combinations recited, retrieving printing device data from component memory of the replaceable printing component or components, wherein the printing device data comprises identification information or usage information of the printing device or devices in which the replaceable printing component or components was or were previously installed, and do not disclose a method as recited in independent claim 1 further including receiving the replaceable printing component from the customer, wherein the replaceable printing component was previously installed in the printing device of the customer.

Independent claim 26 includes **"receiving a used replaceable printing component from a customer;"** and **"retrieving printing device data from component memory of the used replaceable printing component,"** with **"the printing device data comprising one or more of identification information or usage information of a printing device in which the used replaceable printing component was used."**

Independent claim 27 includes **"after removal of a replaceable printing component from a printing device, retrieving printing device data from component memory of the replaceable printing component,"** with **"the printing device data comprising one or**

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more of identification information or usage information of the printing device from which the replaceable printing component was removed."

Independent claims 26 and 27, therefore, include retrieving printing device data from component memory of the used replaceable printing component, wherein the printing device data comprises identification information or usage information of a printing device in which the replaceable printing component was used or from which the replaceable printing component was removed, with independent claim 27 further including retrieving printing device data from component memory of the replaceable printing component after removal of a replaceable printing component from a printing device.

With respect to the cited references, Appellant submits that these references, individually or in combination, do not disclose receiving a used replaceable printing component from a customer, and retrieving printing device data from component memory of the used replaceable printing component, wherein the printing device data comprises identification information or usage information of a printing device in which the used replaceable printing component was used, as recited in independent claim 26, and do not disclose, after removal of a replaceable printing component from a printing device, retrieving printing device data from component memory of the replaceable printing component, wherein the printing device data comprises identification information or usage information of the printing device from which the replaceable printing component was removed, as recited in independent claim 27.

Regarding the Hayward reference, the Hayward reference relates to an automatic supply ordering system for electronically ordering a consumable component or replaceable part in a marking machine (see Hayward, Abstract). More specifically, the Hayward reference provides that:

Conditions in the machine 10 may indicate a need to replace a consumable item or part (e.g., paper, ink, toner, cartridge, printhead, drum). Using the sensed indicia from registration, an automatic electronic customer direct supply ordering mechanism can advantageously identify a replacement part or consumable item that is needed and the proper part can then be automatically ordered and sent to the user (Hayward, col. 5, lines 6-12).

In this regard, and with reference to Fig. 7, the Hayward reference provides that:

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When the user has filled out the purchase order screen, at S36 the browser sends the purchase order to the manufacturer's server (40, FIG. 2). Alternatively *[sic]*, when the user has filled out the purchase order screen, at S36 the application launches an e-mail module to send the purchase order data to the manufacturer's server (40, FIG. 2) (Hayward, col. 8, lines 3-9).

Continuing, the Hayward reference provides that:

The server 40 may forward an order to a supplier local to the user's location or the server 40 may process the order and ship directly to the user (Hayward, col. 8, lines 46-48).

Thus, with the Hayward reference, an automatic supply ordering system for electronically ordering a consumable component or replaceable part of marking machine 10 is provided wherein the replacement part or consumable item that is needed is automatically ordered and sent to the user. The automatic supply ordering system of the Hayward reference, however, does not include receiving a replaceable printing component from a customer, wherein the replaceable printing component was previously installed in a printing device of the customer, or receiving a used replaceable printing component from a customer, as recited in the present claims.

In addition, although the Hayward reference provides that "*[t]he marking apparatus 8 or a remote output device 50 may regularly or intermittently interrogate the consumable component 11 for information,*" the interrogated 'information' relates to "*the condition of the consumable component 11*" (see Hayward, col. 9, lines 12-15, 21-32, and 43-50). Such 'information', however, does not relate to the marking apparatus. As such, the automatic supply ordering system of the Hayward reference does not include retrieving printing device data from component memory of a replaceable printing component or components, or retrieving printing device data from component memory of the used replaceable printing component, or retrieving printing device data from component memory of the replaceable printing component after removal of a replaceable printing component from a printing device, wherein the printing device data comprises identification information or usage information of a printing device or devices in which the replaceable printing component or components was

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or were previously installed, or was used or from which was removed, as recited in the present claims.

Regarding the Cremon reference, Appellant notes that the publication date of the Cremon reference is December 19, 2002, and the filing date of the Cremon reference is July 24, 2001. The filing date of the present application, however, is March 28, 2001. Thus, the filing date of the present application precedes the filing date of the Cremon reference.

The first paragraph [0001] of the Cremon reference provides that:

This application is a CIP of copending U.S. patent application Ser. No. 09/249,879 [filed on Feb. 16, 1999], which is a CIP of co-pending U.S. patent application Ser. No. 09/202,476 [filed on Jan. 21, 2000], which claims priority from PCT/SE97/01322 filed on Aug. 4, 1997. Additional matter claims the benefit of U.S. Provisional patent applications No. 60/221,562 filed Jul. 28, 2000 and No. 60/223,941 filed Aug. 9, 2000.

Appellant submits, however, that before the Cremon reference can rely upon the filing date of an earlier-filed application as the effective date in a rejection under 35 U.S.C. 102(e), a determination must be made as to whether the subject matter used to make the rejection is appropriately supported in the replied upon earlier-filed application's disclosure (see MPEP 706.02(f)(1) and MPEP 706.02(i)). As outlined in MPEP 706.02(f)(1) (emphasis added):

The 35 U.S.C. 102(e) date of a reference that did not result from, nor claimed the benefit of, an international application is its earliest effective U.S. filing date, taking into consideration any proper benefit claims to prior U.S. applications under 35 U.S.C. 119(e) or 120 *if the prior application(s) properly supports the subject matter used to make the rejection* in compliance with 35 U.S.C. 112, first paragraph.

As recognized above, the first paragraph of the Cremon reference identifies the application as a "Continuation-in-part" application. As outlined in MPEP 201.08 (emphasis in original):

A continuation-in-part is an application filed during the lifetime of an earlier nonprovisional application, repeating some substantial portion or all of the earlier nonprovisional application and *adding matter not disclosed* in the said earlier nonprovisional application.

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Thus, the Cremon reference, by definition, is an application adding matter not disclosed in the earlier nonprovisional application. Regarding a parent application's filing date when a reference is a continuation-in-part of the parent application, as outlined in MPEP 2136.03 IV (emphasis added):

In order to carry back the 35 U.S.C. 102(e) critical date of the U.S. patent reference to the filing date of a parent application, the U.S. patent reference must have a right of priority to the earlier date under 35 U.S.C. 120 or 365(c) *and the parent application must support the invention claimed* as required by 35 U.S.C. 112, first paragraph.

Furthermore, regarding priority from a provisional application under 35 U.S.C. 119(e), as outlined in MPEP 2136.03 III (emphasis added):

The 35 U.S.C. 102(e) critical reference date of a U.S. patent or U.S. application publications and certain international application publications entitled to the benefit of the filing date of a provisional application under 35 U.S.C. 119(e) is the filing date of the provisional application with certain exceptions *if the provisional application(s) properly supports the subject matter relied upon to make the rejection* in compliance with 35 U.S.C. 112, first paragraph. See MPEP § 706.02(f)(1).

Accordingly, the filing date of an earlier nonprovisional application and the filing date of an earlier provisional application may only be relied upon in a rejection under 35 U.S.C. 102(e) if the prior applications properly support the subject matter used to make the rejection. Conversely, subject matter not supported by the earlier nonprovisional application and subject matter not supported by the earlier provisional application is not entitled to the benefit of the earlier filing date.

In this instance, with regard to the Cremon reference, subject matter not disclosed in Nonprovisional Application Nos. 09/249,879 or 09/202,476 and/or subject matter not disclosed in Provisional Application Nos. 60/221,562 or 60/223,941 is not entitled to the benefit of the respective earlier filing dates. Appellant, therefore, submits that a determination must be made as to whether the subject matter of the Cremon reference used to make the rejection of claims 27, 26, 16-19, and 1-8 [and 9] under 35 U.S.C. 103(a) is

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appropriately supported in Nonprovisional Application Nos. 09/249,879 or 09/202,476 and/or Provisional Application Nos. 60/221,562 or 60/223,941.

As the Cremon reference is a "Continuation-in-Part" application, the Cremon reference, by definition, is an application *adding matter not disclosed* in the earlier nonprovisional applications. See MPEP 201.08. Accordingly, subject matter not disclosed in the earlier nonprovisional applications is not entitled to the benefit of the earlier filing date. The determination as to whether the subject matter used to make the rejection of claims 27, 26, 16-19, and 1-8 [and 9] under 35 U.S.C. 103(a) is properly supported in Nonprovisional Application Nos. 09/249,879 or 09/202,476 and/or Provisional Application Nos. 60/221,562 or 60/223,941, therefore, is tantamount to the propriety of the rejections.

Without the above determination, Appellant submits that the effective date of the Cremon reference is the filing date of July 24, 2001. As outlined above, the filing date of the present application, however, is March 28, 2001. Thus, Appellant submits that the Cremon reference does not qualify as a reference under 35 U.S.C. 102(e) and, therefore, does not qualify as a reference under 35 U.S.C. 103(a).

Further to the above, Appellant notes that the Cremon reference relates to reading from and writing to RFID's in a printer or other programmable device (see Cremon, para. [0041]). In this regard, the Cremon reference provides that:

A code is read from the RFID tag. The code is used in various ways; for setting of various parameters of the printer; for controlling the layout of the labels printed; for controlling the text to be printed on the labels; and for controlling the data communication with other equipment. Also, data may be read for sending to external computers (Cremon, para. [0044]).

In addition, the Cremon reference provides that:

Data may also be written to the RFID tags. The data may be generated by an external computer or other source or by the processor of the printer as a response to system status or information read from the tag. The data may contain various kinds of information, e.g. product information, control data for reading other equipment, such as luggage handling equipment in airports, expiry of foods stuff, etc. (Cremon, para. [0045]).

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Accordingly, although the Cremon reference provides that "[a] code is read from the RFID tag," and provides that "[d]ata may also be written to the RFID tags," such "code" or "data" does not comprise identification information or usage information of a printing device or devices in which a replaceable printing component or components was or were previously installed, or was used or from which was removed. As such, the Cremon reference does not include retrieving printing device data from component memory of a replaceable printing component or components, or retrieving printing device data from component memory of the used replaceable printing component, or retrieving printing device data from component memory of the replaceable printing component after removal of a replaceable printing component from a printing device, wherein the printing device data comprises identification information or usage information of a printing device or devices in which the replaceable printing component or components was or were previously installed, or was used or from which was removed, as recited in the present claims.

Regarding the Yokomori reference, the Yokomori reference simply relates to a recycling method for a process cartridge and a process cartridge produced thereby (see Yokomori, Abstract). The Yokomori reference, however, does not include retrieving printing device data from component memory of a replaceable printing component or components, or retrieving printing device data from component memory of the used replaceable printing component, or retrieving printing device data from component memory of the replaceable printing component after removal of a replaceable printing component from a printing device, wherein the printing device data comprises identification information or usage information of a printing device or devices in which the replaceable printing component or components was or were previously installed, or was used or from which was removed, as recited in the present claims.

In view of the above, Appellant submits that the combination of the Hayward, Cremon, and Yokomori references does not teach or suggest all of the limitations of independent claims 1, 16, 26, and 27. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

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Thus, for at least the reasons set forth above, Appellant submits that the Examiner has not established a *prima facie* case of obviousness of independent claims 1, 16, 26, and 27, and submits that independent claims 1, 16, 26, and 27 are each patentably distinct from the Hayward, Cremon, and Yokomori references. Furthermore, as dependent claims 2-8 [and 9] further define patentably distinct claim 1, and dependent claims 17-19 further define patentably distinct claim 16, Appellant submits that these dependent claims are also patentably distinct from the Hayward, Cremon, and Yokomori references. Appellant, therefore, respectfully submits that the rejection of claims 27, 26, 16-19, and 1-8 [and 9] under 35 U.S.C. 103(a) is not correct and should be withdrawn, and submits that claims 27, 26, 16-19, and 1-8 [and 9] should be allowed.

C. Rejection of claims 16-19, 1-8 [and 9], 26, and 27 under 35 U.S.C. 103(a)

Because the rejection of claims 16-19, 1-8 [and 9], 26, and 27 under 35 U.S.C. 103(a) as being obvious over Hardman et al. in view of Cremon et al. and Yokomori et al. or vice versa fails to establish a *prima facie* case of obviousness, the rejection of claims 16-19, 1-8 [and 9], 26, and 27 is not correct and should be withdrawn.

As outlined above, independent claims 1 and 16 include retrieving printing device data from component memory of the replaceable printing component or components, wherein the printing device data comprises identification information or usage information of the printing device or devices in which the replaceable printing component or components was or were previously installed, with independent claim 1 further including receiving the replaceable printing component from the customer, wherein the replaceable printing component was previously installed in the printing device of the customer. In addition, independent claims 26 and 27 include retrieving printing device data from component memory of the used replaceable printing component, wherein the printing device data comprises identification information or usage information of a printing device in which the replaceable printing component was used or from which the replaceable printing component was removed, with independent claim 27 further including retrieving printing device data from component memory of the replaceable printing component after removal of a replaceable printing component from a printing device.

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Regarding the Hardman reference, Appellant notes that the publication date of the Hardman reference is June 20, 2002, and the filing date of the Hardman reference is July 26, 2001. The filing date of the present application, however, is March 28, 2001. Thus, the filing date of the present application precedes the filing date of the Hardman reference.

The first paragraph [0001] of the Hardman reference provides that:

This application is a continuation-in-part (CIP) of U.S. Application Ser. No. [09/915,858], filed Jul. 26, 2001, which claims priority to and the benefit of U.S. Provisional Application Ser. No. 60/220,896, filed Jul. 26, 2000..

Appellant submits, however, that before the Hardman reference can rely upon the filing date of an earlier-filed application as the effective date in a rejection under 35 U.S.C. 102(e), a determination must be made as to whether the subject matter used to make the rejection is appropriately supported in the replied upon earlier-filed application's disclosure (see MPEP 706.02(f)(1) and MPEP 706.02(i)). As outlined in MPEP 706.02(f)(1) (emphasis added):

The 35 U.S.C. 102(e) date of a reference that did not result from, nor claimed the benefit of, an international application is its earliest effective U.S. filing date, taking into consideration any proper benefit claims to prior U.S. applications under 35 U.S.C. 119(e) or 120 *if the prior application(s) properly supports the subject matter used to make the rejection* in compliance with 35 U.S.C. 112, first paragraph.

As recognized above, the first paragraph of the Hardman reference identifies the application as a "Continuation-in-part" application. As outlined in MPEP 201.08 (emphasis in original):

A continuation-in-part is an application filed during the lifetime of an earlier nonprovisional application, repeating some substantial portion or all of the earlier nonprovisional application and *adding matter not disclosed* in the said earlier nonprovisional application.

Thus, the Hardman reference, by definition, is an application adding matter not disclosed in the earlier nonprovisional application. Regarding a parent application's filing

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date when a reference is a continuation-in-part of the parent application, as outlined in MPEP 2136.03 IV (emphasis added):

In order to carry back the 35 U.S.C. 102(e) critical date of the U.S. patent reference to the filing date of a parent application, the U.S. patent reference must have a right of priority to the earlier date under 35 U.S.C. 120 or 365(c) ***and the parent application must support the invention claimed*** as required by 35 U.S.C. 112, first paragraph.

Furthermore, regarding priority from a provisional application under 35 U.S.C. 119(e), as outlined in MPEP 2136.03 III (emphasis added):

The 35 U.S.C. 102(e) critical reference date of a U.S. patent or U.S. application publications and certain international application publications entitled to the benefit of the filing date of a provisional application under 35 U.S.C. 119(e) is the filing date of the provisional application with certain exceptions ***if the provisional application(s) properly supports the subject matter relied upon to make the rejection*** in compliance with 35 U.S.C. 112, first paragraph. See MPEP § 706.02(f)(1).

Accordingly, the filing date of an earlier nonprovisional application and the filing date of an earlier provisional application may only be relied upon in a rejection under 35 U.S.C. 102(e) **if the prior applications properly support the subject matter used to make the rejection**. Conversely, subject matter not supported by the earlier nonprovisional application and subject matter not supported by the earlier provisional application is not entitled to the benefit of the earlier filing date.

In this instance, with regard to the Hardman reference, subject matter not disclosed in Nonprovisional Application No. 09/915,858 and/or subject matter not disclosed in Provisional Application No. 60/220,896 is not entitled to the benefit of the respective earlier filing dates. Appellant, therefore, submits that a determination must be made as to whether the subject matter of the Hardman reference used to make the rejection of claims 16-19, 1-8 [and 9], 26, and 27 under 35 U.S.C. 103(a) is appropriately supported in Nonprovisional Application No. 09/915,858 and/or Provisional Application No. 60/220,896.

As the Hardman reference is a "Continuation-in-Part" application, the Hardman reference, by definition, is an application *adding matter not disclosed* in the earlier

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nonprovisional applications. See MPEP 201.08. Accordingly, subject matter not disclosed in the earlier nonprovisional applications is not entitled to the benefit of the earlier filing date. The determination as to whether the subject matter used to make the rejection of claims 16-19, 1-8 [and 9], 26, and 27 under 35 U.S.C. 103(a) is properly supported in Nonprovisional Application No. 09/915,858 and/or Provisional Application No. 60/220,896, therefore, is tantamount to the propriety of the rejections.

Without the above determination, Appellant submits that the effective date of the Hardman reference is the filing date of July 26, 2001. As outlined above, the filing date of the present application, however, is March 28, 2001. Thus, Appellant submits that the Hardman reference does not qualify as a reference under 35 U.S.C. 102(e) and, therefore, does not qualify as a reference under 35 U.S.C. 103(a).

Further to the above, Appellant notes that the Hardman reference relates to an electronic tire maintenance system provided for measuring a parameter of a device at a first location where the device is a tire tag mounted inside a tire that measures tire data and transmits that data to a remote source in response to an interrogation request, an alert condition, or automatically on a periodic basis (see Hardman, Abstract). More specifically, the Hardman reference "*...relates in general to tire parameter monitoring systems and in particular to an electronic tire management system including tire tags, where each tag has an electronic sensor circuit that conserves power by "sleeping" and periodically "waking-up" to measure and store tire parameters, such as temperature and pressure*" (Hardman, para. [0002]).

Appellant notes that "[i]n order to rely on a reference as a basis for rejection of an Appellant's invention, the reference must either be in the field of Appellant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). In this regard, Appellant submits that the Hardman reference is not analogous art in relation to the present claims. More specifically, Appellant submits that the general scope of the Hardman reference (viz., a tire parameter monitoring system) is outside the field of endeavor of the present claims (viz., retrieving printing device data from component memory of a replaceable printing component). In addition, Appellant submits that the particular problem

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with which the Hardman reference is involved (viz., monitoring tires for parameters such as temperature and pressure) is not pertinent to the present claims (viz., retrieving printing device data from component memory of a replaceable printing component). Thus, Appellant submits that the Hardman reference is not analogous art in relation to the present claims.

Furthermore, regarding the Cremon and Yokomori references, as outlined above, neither of these references include retrieving printing device data from component memory of a replaceable printing component or components, or retrieving printing device data from component memory of the used replaceable printing component, or retrieving printing device data from component memory of the replaceable printing component after removal of a replaceable printing component from a printing device, wherein the printing device data comprises identification information or usage information of a printing device or devices in which the replaceable printing component or components was or were previously installed, or was used or from which was removed, as recited in the present claims.

In view of the above, Appellant submits that the combination of the Hardman, Cremon, and Yokomori references does not teach or suggest all of the limitations of independent claims 1, 16, 26, and 27. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Thus, for at least the reasons set forth above, Appellant submits that the Examiner has not established a *prima facie* case of obviousness of independent claims 1, 16, 26, and 27, and submits that independent claims 1, 16, 26, and 27 are each patentably distinct from the Hardman, Cremon, and Yokomori references. Furthermore, as dependent claims 2-8 [and 9] further define patentably distinct claim 1, and dependent claims 17-19 further define patentably distinct claim 16, Appellant submits that these dependent claims are also patentably distinct from the Hardman, Cremon, and Yokomori references. Appellant, therefore, respectfully submits that the rejection of claims 16-19, 1-8 [and 9], 26, and 27 under 35 U.S.C. 103(a) is not correct and should be withdrawn, and submits that claims 16-19, 1-8 [and 9], 26, and 27 should be allowed.

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CONCLUSION

For the above reasons, Appellant respectfully submits that the art of record neither anticipates nor renders obvious the claimed invention. Thus, the claimed invention does patentably distinguish over the art of record. Appellant, therefore, respectfully submits that the above rejections are not correct and should be withdrawn, and respectfully requests that the Examiner be reversed and that all pending claims be allowed.

Respectfully submitted,

Michael J. Borg et al.,

By,

DICKE, BILLIG & CZAJA, PLLC

Fifth Street Towers, Suite 2250

100 South Fifth Street

Minneapolis, MN 55402

Telephone: (612) 573-2006

Facsimile: (612) 573-2005

Date: AUG. 30, 2010

SAL:skh

/SCOTT LUND/

Scott A. Lund

Reg. No. 41,166

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CLAIMS APPENDIX

1. (Previously Presented) A method, comprising:
 - receiving a replaceable printing component from a customer, the replaceable printing component previously installed in a printing device of the customer;
 - retrieving printing device data from component memory of the replaceable printing component, the printing device data comprising one or more of identification information or usage information of the printing device in which the replaceable printing component was previously installed;
 - storing the printing device data in a customer database and associating the printing device data with a customer record of the customer;
 - accessing the printing device data in the customer database; and
 - assisting a customer with solving problems related to the printing device by way of the printing device data.
2. (Previously Presented) The method as recited in claim 1, wherein the receiving a replaceable printing component from a customer further comprises receiving the replaceable printing component after the replaceable printing component has been depleted.
3. (Previously Presented) The method as recited in claim 1, wherein the assisting a customer with solving problems related to the printing device further comprises customizing solutions for the customer based on the printing device data.
4. (Previously Presented) The method as recited in claim 1, wherein the accessing the printing device data in the customer database further comprises accessing previously stored database information related to the customer.
5. (Previously Presented) The method as recited in claim 4, further comprising:
 - deriving the previously stored database information from component memory of previously returned replaceable printing components.

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6. (Previously Presented) The method as recited in claim 4, further comprising:
deriving the previously stored database information from information submitted by the customer on a registration card.
7. (Previously Presented) The method as recited in claim 1, wherein the printing device is a laser printer and the replaceable printing component is a toner cartridge.
8. (Previously Presented) The method as recited in claim 1, further comprising
following certain rules when printing device data associated with a customer meets certain criteria.
9. (Previously Presented) The method as recited in claim 1, further comprising:
testing the replaceable printing component for a defect;
finding the defect and storing defect information of the defect in the customer database;
associating the defect information to one or more other customers of the customer database that use a similar replaceable printing component; and
wherein the accessing the printing device data further comprises accessing the defect information in the customer database.
- 10-15. (Cancelled)
16. (Previously Presented) A method comprising:
retrieving printing device data from component memory of a plurality of replaceable printing components previously installed in printing devices, the printing device data comprising one or more of identification information or usage information of the printing devices in which the replaceable printing components were previously installed;
compiling the printing device data into a customer database;
accessing the printing device data of the customer database; and

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assisting a customer with resolving a problem with a printing device using the printing device data of the customer database.

17. (Previously Presented) The method as recited in claim 16, further comprising storing customer information for a customer in the customer database and associating the customer information with compiled data that is related to a printing device used by the customer.

18. (Previously Presented) The method as recited in claim 17, further comprising acquiring the customer information for the customer from a registration card used to register the customer as the purchaser of the printing device used by the customer.

19. (Previously Presented) The method as recited in claim 17, further comprising associating the customer information with general data related to a printing device or printing device replaceable component used by a customer.

20-25. (Cancelled)

26. (Previously Presented) A method, comprising:

- receiving a used replaceable printing component from a customer;
- retrieving printing device data from component memory of the used replaceable printing component, the printing device data comprising one or more of identification information or usage information of a printing device in which the used replaceable printing component was used;
- storing the printing device data in a customer database and associating the printing device data with a customer record of the customer;
- accessing the printing device data of the customer database; and
- assisting a customer with resolving a problem with a printing device using the printing device data of the customer database.

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27. (Previously Presented) A method, comprising:

after removal of a replaceable printing component from a printing device, retrieving printing device data from component memory of the replaceable printing component, the printing device data comprising one or more of identification information or usage information of the printing device from which the replaceable printing component was removed;

storing the printing device data in a database;

accessing the printing device data of the database; and

assisting a customer with resolving a problem with a printing device using the printing device data of the database.

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.